

Ruling Sought in Spy-Related Wiretaps

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The Justice Department has told the Supreme Court that it is ready for a showdown on the power of Presidents to authorize foreign intelligence wiretapping without court permission.

Solicitor General Robert H. Bork said that although the government supports a federal appellate court decision upholding executive wiretaps, the decision is worthy of review and a final ruling by the Supreme Court itself.

The case of convicted Soviet spy Igor A. Ivanov reaches the court at a time of fresh disclosures of and charges of government-sponsored invasions of privacy in the name of national security. Government lawyers have been accused of withholding from the courts evidence of illegal conduct by federal agents.

Ivanov, who was a chauffeur for the Soviet trading agency Amtorg when arrested in 1963, is petitioning the high court claiming that FBI's conceded wiretapping without a warrant tainted the government's evidence against him. He is under a 20-year prison sentence.

Bork's decision not to oppose review of the case makes it more likely, but not certain,



IGOR A. IVANOV
... wiretapped by FBI



ROBERT H. BORK
... favors final ruling

that the justices will agree to a full hearing and decision. The court, which does not have to review every case or explain why it denies review, could take some action soon after opening of the new term Oct. 7.

Two years ago the court dramatically and unanimously rejected a Nixon administration claim that the executive branch could wiretap and bug suspected radicals in domestic "national security" investigations without the kind of court warrant Congress has re-

quired in ordinary federal crimes.

In that 8-to-0 decision the court specifically reserved ruling on similar wiretaps without a court order "where foreign powers are involved" as in surveillance of embassies or suspected foreign agents.

The issues in the Ivanov case are the scope of the surveillance power; the use in criminal trials of evidence gathered by executive taps and what the ground rules should be for determining whether a case has been

tainted by illegal government conduct.

Ivanov's attorneys, Edward Bennett Williams and Robert L. Weinberg, contend that the Justice Department must tell more about the wiretapping on which Ivanov was overheard or else admit that the case was hopelessly dependent on illegal evidence.

Wiretaps led the FBI to arrest Ivanov and John W. Butenko, an American engineer with access to Air Force plans for a Strategic Air Command electronic system, at a railroad station in Englewood, N. J., where agents saw Butenko hand a briefcase to Ivanov.

Butenko received a 30-year sentence. Three Soviet citizens employed at the United Nations were ordered home.

The wiretapping issues arose in 1969 during an earlier Ivanov appeal to the Supreme Court when the Justice Department disclosed the taps but argued that disclosure of the details to the defense was not required.

The justices sent the case back to New Jersey's federal courts for full hearings. A judge reinstated Ivanov's conviction and was upheld March 5 by the Third U.S. Circuit Court of Appeals in Philadelphia.

See WIRETAP, E16, Col. 1

WIRETAP, From E1

A 5-to-4 majority held that a prior judicial warrant was not required and that the wiretap evidence was properly used at the trial because the surveillance was reasonably related to the exercise of broad presidential powers in the foreign affairs field.

The dissenters called the taps a violation of federal communications law, the Fourth Amendment, or both. One dissenting judge said the court was approving an "awesome executive prerogative" that

would entitle the government to commit burglary and use its fruits to put in jail people who were not spies.

Experts have differed over whether wiretap warrants, which are authorized by the 1968 Safe Streets Act for conventional criminal cases, are feasible in the intelligence area, where the government seeks information rather than evidence. Senate hearings on proposed new warrant laws are scheduled for the fall.